

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

May 15, 2020

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

EQUAL EMPLOYMENT  
OPPORTUNITY COMMISSION,

Plaintiff,

KATHERINE HALL,

Intervenor Plaintiff,

v.

AMERICAN MEDICAL RESPONSE  
AMBULANCE SERVICE, INC.,

Defendant.

NO: 2:19-CV-258-RMP

PROTECTIVE ORDER

BEFORE THE COURT is the parties' Stipulated Motion for Protective Order, ECF No. 18. A district court may issue protective orders governing discovery upon a showing of good cause. Fed. R. Civ. P. 26(c). Before issuing a stipulated protective order, a district court judge should ensure that the protective order's restrictions do not infringe on the public's general right to inspect and copy judicial records and documents. *See Kamakana v. City and Cty. of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006).

PROTECTIVE ORDER ~ 1

1           Having reviewed the proposed protective order and the record, the Court  
2 finds good cause to approve the stipulation and enter the agreed-upon protective  
3 order. Accordingly, **IT IS HEREBY ORDERED** that the parties' Stipulated  
4 Motion for Protective Order, **ECF No. 18**, is **GRANTED**. The Stipulated  
5 Protective Order in effect is set forth below.

6           The parties also jointly request that the Court enter an order pursuant to Fed.  
7 R. Evid. 502(d), stating that the production of materials in this case shall not  
8 constitute a waiver by the producing party of any privilege applicable to those  
9 documents. However, Fed. R. Evid. 502(d) applies only to the attorney-client  
10 privilege and the work product protection. Fed. R. Evid. 502 ("The following  
11 provisions apply in the circumstances set out, to disclosure of a communication or  
12 information covered by the attorney-client privilege or work-product protection.").

13           Accordingly, **IT IS FURTHER ORDERED** that pursuant to Fed. R. Evid.  
14 502(d), the production of any documents in this proceeding shall not, for the  
15 purposes of this proceeding or any other federal or state proceeding, constitute a  
16 waiver by the producing party of the attorney-client privilege or work-product  
17 protection. If the parties would like the Court to issue an Order applying to other  
18 forms of privilege, they must submit a motion that outlines this Court's authority to  
19 issue such an Order. This Order shall not be interpreted to waive the right of any  
20 party to review documents prior to their production in discovery in this case.

## PROTECTIVE ORDER

### 1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with Fed. R. Civ. P. 26(c). It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles, and it does not presumptively entitle parties to file confidential information under seal. *See Kamakana v. City and Cty. of Honolulu*, 447 F.3d 1172 (9th Cir. 2006).

### 2. "CONFIDENTIAL" MATERIAL

"Confidential" material shall include the following documents and tangible things produced or otherwise exchanged: social security numbers, medical records and similar personal information; the parties' financial records; confidential information in the personnel files of Plaintiff-Intervenor and of employees not party to this action, Defendant's records concerning patient calls; contact information of witnesses; and Defendant's non-public business information that is not subject to public disclosure.

1 3. SCOPE

2 The protections conferred by this agreement cover not only confidential material  
3 (as defined above), but also (1) any information copied or extracted from  
4 confidential material; (2) all copies, excerpts, summaries, or compilations of  
5 confidential material; and (3) any testimony, conversations, or presentations by  
6 parties or their counsel that might reveal confidential material. However, the  
7 protections conferred by this agreement do not cover information that is in the public  
8 domain or becomes part of the public domain through trial or otherwise.

9 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

10 4.1 Basic Principles. A receiving party may use confidential material that  
11 is disclosed or produced by another party or by a non-party in connection with this  
12 case only for prosecuting, defending, attempting to settle this litigation, or in any  
13 post-litigation consent decree compliance monitoring. Confidential material may be  
14 disclosed only to the categories of persons and under the conditions described in this  
15 agreement. Confidential material must be stored and maintained by a receiving party  
16 at a location and in a secure manner that ensures that access is limited to the persons  
17 authorized under this agreement.

18 4.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless  
19 otherwise ordered by the court or permitted in writing by the designating party, a  
20 receiving party may disclose any confidential material only to:  
21

1 (a) the receiving party's counsel of record in this action, as well as  
2 employees of counsel to whom it is reasonably necessary to disclose the information  
3 for this litigation;

4 (b) the officers, directors, and employees (including in house  
5 counsel) of the receiving party to whom disclosure is reasonably necessary for this  
6 litigation, unless the parties agree that a particular document or material produced is  
7 for Attorney's Eyes Only;

8 (c) experts and consultants to whom disclosure is reasonably necessary  
9 for this litigation and who have signed the "Acknowledgment and Agreement to Be  
10 Bound" (Exhibit A);

11 (d) the court, court personnel, and court reporters and their staff;

12 (e) copy or imaging services retained by counsel to assist in the  
13 duplication of confidential material, provided that counsel for the party retaining the  
14 copy or imaging service instructs the service not to disclose any confidential material  
15 to third parties and to immediately return all originals and copies of any confidential  
16 material;

17 (f) during their depositions, witnesses in the action to whom  
18 disclosure is reasonably necessary and who have signed the "Acknowledgment and  
19 Agreement to Be Bound" (Exhibit A), unless otherwise agreed by the designating  
20 party or ordered by the court. Pages of transcribed deposition testimony or exhibits  
21 to depositions that reveal confidential material must be separately bound by the court

1 reporter and may not be disclosed to anyone except as permitted under this  
2 agreement;

3 (g) the author or recipient of a document containing the information  
4 or a custodian or other person who otherwise possessed or knew the information;  
5 and

6 (h) mediators or settlement judges utilized in the litigation to attempt  
7 settlement of claims.

8 4.3 Filing Confidential Material. Before filing confidential material or  
9 discussing or referencing such material in court filings, the filing party shall confer  
10 with the designating party, to determine whether the designating party will remove  
11 the confidential designation, whether the document can be redacted, or whether a  
12 motion to seal or stipulation and proposed order is warranted. During the meet and  
13 confer process, the designating party must identify the basis for sealing the specific  
14 confidential information at issue, and the filing party shall include this basis in its  
15 motion to seal, along with any objection to sealing the information at issue. Fed. R.  
16 Civ. P. 5.2(d) and the Ninth Circuit decision *Kamakana v. City and County of*  
17 *Honolulu*, 447 F.3d 1172 (9th Cir. 2006), set forth the procedures that must be  
18 followed and the standards that will be applied when a party seeks permission from  
19 the court to file material under seal. A party who seeks to maintain the  
20 confidentiality of its information must satisfy the requirements of Fed. R. Civ. P.  
21 5.2(d), even if it is not the party filing the motion to seal.

1     5.     DESIGNATING PROTECTED MATERIAL

2             5.1     Exercise of Restraint and Care in Designating Material for Protection.

3     Each party or non-party that designates information or items for protection under  
4     this agreement must take care to limit any such designation to specific material that  
5     qualifies under the appropriate standards. The designating party must designate for  
6     protection only those parts of material, documents, items, or oral or written  
7     communications that qualify, so that other portions of the material, documents,  
8     items, or communications for which protection is not warranted are not swept  
9     unjustifiably within the ambit of this agreement.

10            Mass, indiscriminate, or routinized designations are prohibited. Designations  
11     that are shown to be clearly unjustified or that have been made for an improper  
12     purpose (e.g., to unnecessarily encumber or delay the case development process or  
13     to impose unnecessary expenses and burdens on other parties) expose the  
14     designating party to sanctions.

15            If it comes to a designating party's attention that information or items that it  
16     designated for protection do not qualify for protection, the designating party must  
17     promptly notify all other parties that it is withdrawing the mistaken designation.

18            5.2     Manner and Timing of Designations. Except as otherwise provided in  
19     this agreement (see, e.g., second paragraph of section 5.2(a) below), or as otherwise  
20     stipulated or ordered, disclosure or discovery material that qualifies for protection  
21

1 under this agreement must be clearly so designated before or when the material is  
2 disclosed or produced.

3 (a) Information in documentary form: (e.g., paper or electronic documents  
4 and deposition exhibits, but excluding transcripts of depositions or other pretrial or  
5 trial proceedings), the designating party must affix the word “CONFIDENTIAL” to  
6 each page that contains confidential material. If only a portion or portions of the  
7 material on a page qualifies for protection, the producing party also must clearly  
8 identify the protected portion(s) (e.g., by making appropriate markings in the  
9 margins).

10 (b) Testimony given in deposition or in other pretrial or trial proceedings:  
11 the parties must identify on the record, during the deposition, hearing, or other  
12 proceeding, all protected testimony, without prejudice to their right to so designate  
13 other testimony after reviewing the transcript. Any party or non-party may, within  
14 fifteen days after receiving a deposition transcript, designate portions of the  
15 transcript, or exhibits thereto, as confidential.

16 (c) Other tangible items: the producing party must affix in a prominent  
17 place on the exterior of the container or containers in which the information or item  
18 is stored the word “CONFIDENTIAL.” If only a portion or portions of the  
19 information or item warrant protection, the producing party, to the extent practicable,  
20 shall identify the protected portion(s).

1        5.3        Inadvertent Failures to Designate. If timely corrected, an inadvertent  
2 failure to designate qualified information or items does not, standing alone, waive  
3 the designating party's right to secure protection under this agreement for such  
4 material. Upon timely correction of a designation, the receiving party must make  
5 reasonable efforts to ensure that the material is treated in accordance with the  
6 provisions of this agreement.

7        6.        CHALLENGING CONFIDENTIALITY DESIGNATIONS

8        6.1        Timing of Challenges. Any party or non-party may challenge a  
9 designation of confidentiality at any time. Unless a prompt challenge to a  
10 designating party's confidentiality designation is necessary to avoid foreseeable,  
11 substantial unfairness, unnecessary economic burdens, or a significant disruption or  
12 delay of the litigation, a party does not waive its right to challenge a confidentiality  
13 designation by electing not to mount a challenge promptly after the original  
14 designation is disclosed.

15        6.2        Meet and Confer. The parties must make every attempt to resolve any  
16 dispute regarding confidential designations without court involvement. Any motion  
17 regarding confidential designations or for a protective order must include a  
18 certification, in the motion or in a declaration or affidavit, that the movant has  
19 engaged in a good faith meet and confer conference with other affected parties in an  
20 effort to resolve the dispute without court action. The certification must list the date,  
21

1 manner, and participants to the conference. A good faith effort to confer requires a  
2 face-to-face meeting or a telephone conference.

3 6.3 Judicial Intervention. If the parties cannot resolve a challenge without  
4 court intervention, the designating party may file and serve a motion to retain  
5 confidentiality under LCivR 7. The burden of persuasion in any such motion shall  
6 be on the designating party. Frivolous challenges, and those made for an improper  
7 purpose (e.g., to harass or impose unnecessary expenses and burdens on other  
8 parties) may expose the challenging party to sanctions. All parties shall continue to  
9 maintain the material in question as confidential until the court rules on the  
10 challenge.

11 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED  
12 IN OTHER LITIGATION

13 If a party is served with a subpoena or a court order issued in other litigation  
14 that compels disclosure of any information or items designated in this action as  
15 “CONFIDENTIAL,” that party must:

16 (a) promptly notify the designating party in writing and include a copy of  
17 the subpoena or court order;

18 (b) promptly notify in writing the party who caused the subpoena or order  
19 to issue in the other litigation that some or all of the material covered by the subpoena  
20 or order is subject to this agreement. Such notification shall include a copy of this  
21 agreement; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the designating party whose confidential material may be affected.

8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential material to any person or in any circumstance not authorized under this agreement, the receiving party must immediately (a) notify in writing the designating party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the protected material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this agreement, and (d) request that such person or persons execute the “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

When a producing party gives notice to receiving parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in an e-discovery order or agreement that provides for production without prior privilege review. The parties agree to the entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.

10. NON TERMINATION AND RETURN OF DOCUMENTS

Within 60 days after the termination of this action, including all appeals, each receiving party must return all confidential material to the producing party, including all copies, extracts and summaries thereof. Alternatively, the parties may agree upon appropriate methods of destruction.

Notwithstanding this provision, counsel are entitled to retain one archival copy of all documents filed with the court, trial, deposition, and hearing transcripts, correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work product, even if such materials contain confidential material.

Notwithstanding the foregoing, nothing in this order shall be interpreted as limiting or overriding the EEOC's obligation to maintain copies of files pursuant to the Federal Records Act.

The confidentiality obligations imposed by this agreement shall remain in effect until a designating party agrees otherwise in writing or a court orders otherwise.

**IT IS SO ORDERED.** This District Court Clerk is directed to enter this Order and provide copies to counsel.

**DATED** May 15, 2020.

*s/ Rosanna Malouf Peterson*  
 ROSANNA MALOUF PETERSON  
 United States District Judge